



UNIBET POSITION PAPER
REGARDING A POSSIBLE NEW GAMBLING REGULATION IN SWEDEN

“The Government supports the Review Body’s conclusion that the prohibition of online gambling by British consumers would be an entirely unrealistic objective, even if it were thought to be desirable.

The keynote of the Government’s approach to the of the gambling industry is that it should be confined to what is necessary to keep crime out, protect the vulnerable, and ensure that gambling products are fair to consumers.

As the Review Body has clearly shown, many of our current controls are irrelevant to these aims. Remodelling them will offer significant benefits for consumers, business and those who work in the gambling industry, without jeopardising the three key objectives”

(DCMS position paper - A Safe Bet for Success - modernising Britain's gambling laws)

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1. Executive Summary: Unibet Six Points of a Modern European Gaming Market

- Free movement, *e.g.*, art. 49, and competition: One of the fundamental principles of EU prosperity over the last 60 years;
- Non-discriminating national regulation: A member state may, at its own discretion, prohibit gambling, or restrict marketing of gambling. However, such measures must be non-discriminating and proportionate;
- Fight Problem Gambling based on science: The key players of the European private gambling industry put responsible gambling as a top priority on their agendas;
- State regulate, not operate: No evidence that state controlled operators are better than private operators in handling and mitigating undesired effects of gambling
- Fair and equal license conditions:
 - Betting tax up to 10% of gross winnings to the country of consumption
 - Likely to be income neutral to stakeholders, creating win-win for others
 - Same opportunities for state and private
 - Compliance secured by independent authority
- Unibet at the forefront and in cooperation with all stakeholders: it is not just about gaming but also individual freedoms. Consumer choice and technology will make legal restrictions unsustainable and ineffective.

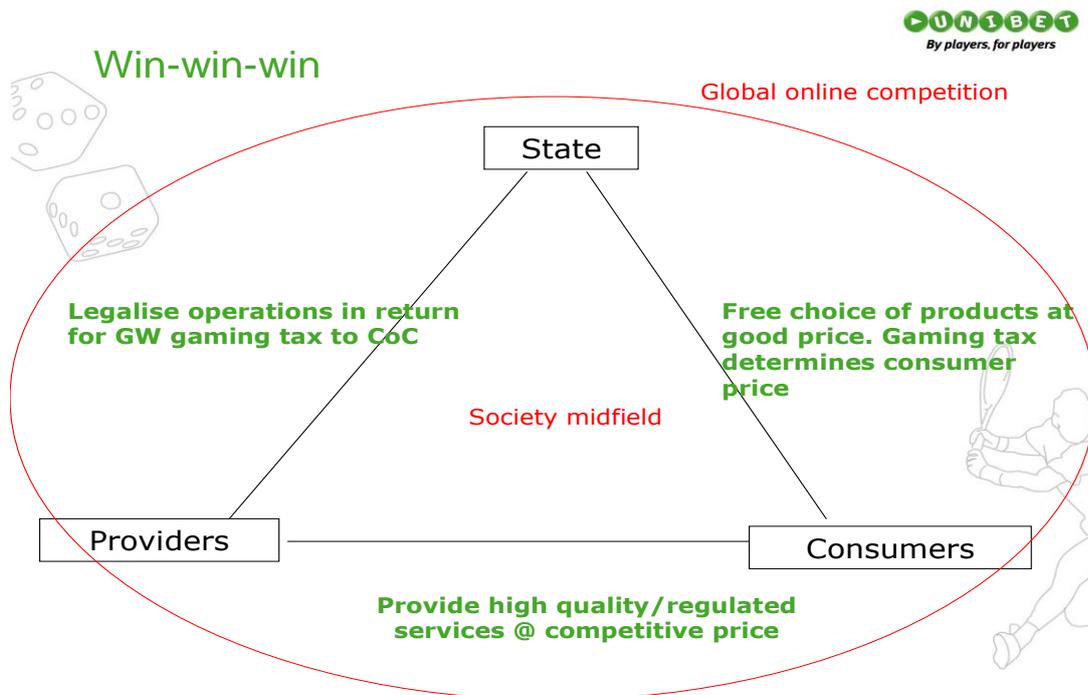


2. Abstract

From various reports in the media, it is commonly understood, that the Swedish Government is seriously contemplating proposing certain fundamental changes to Swedish gambling regulations. In particular a possibility may be opened up for the private gambling industry to operate and compete in the Swedish gambling market, which has previously only been subject to a de facto monopoly. In the aforementioned context Unibet wishes to express its position as follows herein.

The overall goal is to create a fairly regulated gambling and betting market within EU based on free competition between licensed operators, having equal access to markets. The aim is to achieve revenues to governments and the politically selected constituencies (sports, media, culture, etc.) of the same magnitude as today and at the same time allow commercially attractive margins for the operators and punters. This should be achieved while keeping gambling addiction at the same level as today or lower and reducing the possibilities for fraud.

As consumer choice and technology will always prevail to bypass restrictions , Unibet holds that a too restrictive approach will only work counter productive as i) it will leave Swedish consumers without any redress or protection and ii) does not provide for a mechanism for the Swedish state to yield a certain tax. In this view, a regulatory model should create a win-win-win situation¹ for the main stakeholders concerned ensuring that they voluntarily comply instead of circumventing restrictions.



¹ Cf. Game theories such as the Nash equilibrium



Unibet² advocates a non-discriminatory regulation of the national remote gaming and betting market, based upon the highest regulatory standards and cooperation between competent authorities in the Member States concerned and the industry³.

Man (homo ludens) has always played and will continue to play. If, for instance, established Swedish financial intermediaries are banned from intervening in remote gambling transactions, such restriction is not efficient and will only be counterproductive: consumers will open bank accounts abroad and be forced to use alternative less transparent mechanisms to channel funds. By the same token, too high remote taxes will lead to a more expensive product, pushing consumers outside the regulatory model⁴ and towards non-regulated sites where no guarantees exist. In contrast, Unibet holds that new technologies offer great opportunities and – due to registration and traceability – allow an increased level of protection, both for consumers and against less bona fide operations. Hence, one should not oppose new technologies, but embrace and use them to come to more efficient and sustainable solutions.

This new legislative and regulatory approach:

- Is driven by new technologies and informed consumer choice;
- Is based upon facts and supported by number of studies in different Member States⁵ and in the entire European Union⁶;
- Does not imply that historical market operators, such as the Svenska Spel and ATG disappear, nor the revenues generated by them.

Without prejudice to European law, does Unibet recognize that existing financial gaming monopolies generate substantial income for the public budget. However, Unibet would like to formulate the following observations:

- as with other sectors, Unibet opinions that the macro-economic effect of a non-discriminatory and highly regulated market is positive. We advocate an independent study to be commissioned, enabling a sound debate based upon facts, statistical and other evidence, not upon speculation;

²Annual report available on www.unibetgroupplc.com

³This cooperation could be established and further elaborated within the context of existing cooperation mechanism between Member States. European gaming regulators, for instance, meet on a regular basis within GREF Gaming Regulators European Forum (GREF) www.gref.net. Also see the existing frameworks of cooperation between Member States, notably in relation to taxation and customs Union and electronic commerce.

⁴The Guardian, 4 December 2007, "A big Levy increase would come at expense of punters", <http://sport.guardian.co.uk/horseracing/comment/0,,2221324,00.html>>

⁵See notably the proposal adopted by the Belgian Government in July 2006, establishing an accreditation by the independent Gaming Commission of gaming website duly incorporated and established in other Member States of the European Union. www.gamingcommission.fgov.be>. Also see p.13-15 of the 2006 Annual Report of the Gaming Commission

⁶To obtain a detailed overview of the legal and economic aspects of gambling and games of chance, the Commission asked the Swiss Institute of Comparative Law to carry out a study into the sector. The study is the result of close to two years work and provides an analysis of the legal regimes governing gambling and games of chance in the European Union. The study also attempts to give indications on the economic development of the sector. The study confirms that in all Member States the sector is subject to rules and regulations aimed at safeguarding public interest objectives. While pursuing broadly similar aims the national laws and regulations vary considerably and often lead to barriers to the freedom to provide services and the freedom of establishment that are incompatible with Community law.

http://ec.europa.eu/internal_market/services/gambling_en.htm



- In common consultation with different stakeholders, Unibet strives to elaborate an alternative mechanism to allocate profits on an EU, or national, level, for instance based upon profits yielded from the Member State of consumption⁷
- Studies commissioned in relation to the UK Gambling Act 2005⁸ have demonstrated that any profit allocation mechanism for remote gaming, such as taxes, must be established in view of i) the international competition and ii) the fact that remote services can be delocalised easily;

3. Background - 10 years of Unibet

3.1 Unibet Group Plc (“Unibet”) is an international group, incorporated and domiciled within the EU. Its core business is on-line, remotely conducted, cross border gambling; none of its operations are land-based. Unibet is listed on the OMX Nordics Exchange in Stockholm through a depository receipt system, and it has a market capitalisation value exceeding 6 billion SEK⁹. Unibet operates its gambling businesses through a number of operating subsidiaries, all fully licensed in their jurisdiction of incorporation and domiciliation.

3.2 A substantial part of Unibet’s business derives from Sweden; this primarily through the Maltese subsidiary Unibet (International) Ltd via its homepage www.unibet.com, and, secondarily through the British subsidiary Unibet (London) Ltd via its homepage www.unibet.co.uk. All business is conducted remotely, on-line, and without any land-based representation in Sweden.

3.3 Malta and Great-Britain, both being members of the EU, have, together with the EU members Austria, Belgium, Ireland, Italy and a number of other Member States, regulations in place, with individual variances, allowing private industry within the gambling sector¹⁰. In particular Malta has adopted new modern regulations, in principle, covering all sectors, and business models, for on-line gambling. Great-Britain is in a transitional period of phasing out its old regulations in this area, and replacing them with new regulations, very much in tune with today’s reality.

3.4 Under the current regulations in Sweden, Unibet may not promote, market, offer or in any other way, make its services available through businesses over which Swedish law has jurisdiction. For this reason, and in theory, Swedish companies may neither do business with Unibet, denying Swedish based media-, IT and entertainment companies the possibility to establish themselves as legitimate spin-off activities of a EU remote gaming industry.

⁷ Cf. the current EU VAT on electronic services whereby a consumption tax is collected by the service provider in its Country of Origin, e.g., Malta or the United Kingdom, and paid to the country where his customer resides, for instance Sweden. <http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/e-services/index_en.htm>

⁸ Europe Economics, “*Remote Gambling Taxation – a report for the Remote Gaming Association*”, October 2005, www.europe-economics.com.

⁹ Market cap. In October 2007.

¹⁰ Lotteries and Gaming Authority, Malta, www.lga.org.mt; Gambling Commission, Great-Britain, www.gamblingcommission.gov.uk; Amministrazione Autonoma dei Monopoli di Stato, AAMS, www.aams.it.



4. Swedish Law and the EU Treaty

4.1 The current Swedish legislation prohibits Unibet firstly from physically establishing itself in Sweden, and secondly from directly, indirectly, or, via businesses subject to Swedish jurisdiction, market its services, targeting Swedish residents. Effectively, Unibet's remotely conducted business, which is lawfully established in one EU member state, is restricted under national Swedish law, to conduct cross-border business with another EU member state.

4.2 Article 49 of the EU Treaty, to which Sweden is to adhere, and which is superior to Swedish law, in principle, prohibits restrictions from being enforced against a business duly licensed in a member state wishing to compete with a similar business in another member state.

4.3 However, Sweden, together the vast majority of other member states, invokes an exception to Article 49 of the EU Treaty, namely for restrictions fulfilling an aim to ensure issues relating to public policy, subject to that such restrictions are not exercised in a discriminating way, nor in a disproportionate manner, nor simply to increase the public purse.

4.4 The system currently exercised in Sweden, invoking the aforementioned exception, and at the same time allowing state-controlled betting and gaming businesses, is generally described as a de facto monopoly system.

4.5 From the standing jurisprudence of the European Court of Justice¹¹ ("ECJ"), notably the 2003 Gambelli and Lindman judgments, follows that national rules which grant exclusive rights to certain undertakers to organize games, and consequently restrict the freedom to provide gaming services, are only compatible with the EU Treaty provisions on the condition that they are¹²:

- Not discriminatory;
- Imposed as part of a consistent and proportional national policy¹³;
- Justified by imperative reasons of general interest, notably to curb the harmful individual and social effects of gaming;
- Necessary and proportionate: the national restriction must guarantee the achievement of the objective pursued and must not go beyond that which is necessary¹⁴.

In March 2007, the European Court of Justice once more confirmed these principles and clarified in its Placanica judgment that Member States could not rely on the criminal

¹¹ Case C-275/92, 24 March 1994, *Schindler*; Case C-124/97, 21 September 1999, *Läärä*; Case C-67/98, 21 October 1999, *Zenatti*; Case C-243/01, 6 November 2003, *Gambelli*; Case C-42/02, 13 November 2003, *Lindman*.

¹² *Gambelli*, paragraph 65.

¹³ *Zenatti*, paragraph 36, with reference to the observations made by the Advocate General Fennelly in paragraph 32.

¹⁴ *Gambelli*, paragraph 12 and paragraph 73. As Advocate General Alber endorsed the application of the Country of Origin Principle, the *Gambelli* judgment recognized that the UK established bookmaker is already subject to rigorous controls exercised in his country of establishment by a private audit company and by the Inland Revenue and Customs and Excise.



enforcement of gaming law against EU based operator¹⁵. The highest European Court held that if a Member States imposes a criminal penalty on a private held company for pursuing organized activity of collecting bets without holding a licence or a police authorisation as required under the national legislation, and where that company were unable to obtain such a licence or authorization due the member states refusal of granting such license, such national legislation is violating EU law.

The said judgements are to be regarded as authoritative guidelines for national courts to determine whether a domestic de facto monopoly is in line with the EU Treaty or not. In Sweden, recent case law, post Gambelli, Lindman and Placanica, has not found the existing de facto monopoly to be in breach with the EU Treaty.

However, it is known to be the view of a number of legal experts, that national courts may have dealt with gambling cases, also post Gambelli and Lindman, in too abstract a manner, rather than in a concrete manner, and therefore, they have failed to recognise the lack of coherence between the stated aim, with a certain de facto monopoly, and how it is actually exercised.

In this regard, reference must be made to the fact that the number of gaming related cases referred to the European Court of Justice increases year by year. From 1994 to 2003, there where 5 cases. From 2003-2007 there are at least 9 cases, 5 of which were referred in 2007 alone.

The fact that the gaming industry becomes more and more an EU topic is not only reflected by the inclusion of the gambling sector in the Draft Service Directive¹⁶, indirectly calling for a long term harmonisation, the infringement procedures opened by the European Commission¹⁷, but also the more explicit language used by the EU judiciary bodies.

Testimony thereof is the opening statement of Advocate General Colomar in Placanica:

“‘Rien ne va plus’. The Court of Justice can no longer avoid carrying out an in-depth examination of the consequences of the fundamental freedoms of the EC Treaty for the betting and gaming sector.

This is the third time the Court has had to give a ruling on this matter in relation to the current legislation in Italy. ... The guidelines provided in that judgment failed to dispel

¹⁵ ECJ, 6 March 2007, Criminal proceedings against Massimiliano Placanica (Case C 338/04), Christian Palazzese (Case C 359/04), Angelo Sorricchio (Case C 360/04),

¹⁶ < http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm >.

Also see the First report on the application of the e-commerce Directive: “Online gambling, which is currently outside the scope of the Directive, is a new area in which action may be required because of significant Internal Market problems - see for example Case C-243/01s of the European Court of Justice (ECJ press release CJE/03/98), concerning criminal proceedings in Italy against persons collecting Internet bets on behalf of a bookmaker legally licensed in the UK. The Commission will examine the need for and scope of a possible new EU initiative. In addition, the Commission is examining a number of complaints it has received concerning cross-border gambling activities.

< http://ec.europa.eu/internal_market/e-commerce/directive_en.htm#firstreport >

¹⁷ See EU Commission Press Releases IP/07/909 (27/06/2007), IP/07/360 (21/03/2007), IP/06/1362 Date: 12/10/2006 and IP/06/436 (04/04/2006) < http://ec.europa.eu/internal_market/services/gambling_en.htm >



the doubts raised by the Italian legislation and gave rise to a second reference for a preliminary ruling...“

Possibly, as a consequence of the aforementioned situation, has the European Commission issued Reasoned Opinions against 5 Member States, including Sweden, in relation to national gaming legislation. In contrast to the Letter of Formal Notice (LFN), in which the European Commission asks a Member State to clarify certain aspects of a policy, the Commission does take a formal viewpoint against a Member State implying that the national policy is in breach of overriding principles of European law and that an infringement exists that needs to be remedied.

If no satisfactory reply to the reasoned opinion is received from the Member States, the Commission has the possibility to refer the case to the Court of Justice. The Commission is not obliged to do so, but in practice the Commission has always considered that a Member State, which does not follow a reasoned opinion and bring its legislation into conformity with Community law, should be brought in front of the Court of Justice.

As Sweden continues to opinion that its national policy is in line with European law, there is a present risk and opportunity that the European Commission will bring Sweden before the European Court of Justice, the highest court in Europe.

In the event the latter rules that Swedish gaming legislation conflicts with a higher-ranking EU legal rule, regardless of whether it is a national or a Community rule, national authorities must display the national rule¹⁸. In any such event it would mean that Sweden can i) no longer impose any restrictions and/or ii) exposes itself to substantial damage claims from companies that wish to access the national market

5. Unibet vs. the Swedish Government

5.1 Unibet has filed in 2003 an ongoing lawsuit against the Swedish Government on the grounds, that the Swedish Government, while exercising marketing restrictions against Unibet, is violating Unibet's right under the EU treaty to market its services in Sweden. The case is filed with the District Court, *Eskilstuna Tingsrätt*, under file number T 2417-03 and T 2418-03.

In the aforementioned cases Unibet has submitted an extensive concrete analysis of the Swedish de facto monopoly on gambling in comparison with the EU treaty and all relevant case law from the European Court of Justice. The analysis is backed by evidence, which according to Unibet's view, clearly shows that the Swedish Government, in the manner it is exercising its de facto monopoly on gambling, is, without doubt, in breach of the EU treaty. The Supreme Court requested the European Courts of Justice for a preliminary ruling on the interpretation of the Swedish law vis-à-vis European law.

¹⁸ Cf. ECJ in Unibet, paragraphs 50-51. ECJ, Case C-432/05, Unibet vs. Justitiekanslern, 13 March 2007



On the 13th of March 2006, the European Court of Justice held that if Swedish law is in breach of European law, national authorities must disapply the national rules concerned and may not impose restrictions on the provision and promotion of Unibet activities to Swedish residents¹⁹.

Albeit the ECJ referred the case back to the national court and pending the ruling of the national court, all stakeholders must release that the outcome of the case produce a doom scenario whereby the regulatory context may change overnight and no rules whatsoever can be legally imposed or enforced.

6. Monopoly vs. Regulated Competitive Market

Historically in Sweden it could be said that the position on the issue has been rather polarised; simplified it could be said that the basic cornerstones for having the Swedish system with a de fact monopoly are:

- that gambling, as such, on the whole, should be limited in society; which is actually the fundamental aim for having a regulation that prohibits private gambling operators;
- that if gambling is to exist in society, only the Swedish Government, or a non-profit organisation can ensure that the said aim is fulfilled and that public health, public order, and consumers' protection, at the same time, are not put at risk;
- that non-profit organisations, in particular organisations focusing on youth sports, are fully dependant on funding deriving from the de facto monopoly; and
- that the horse racing sport and the horse business are fully dependant on funding deriving from the de facto monopoly.

Regarding the aforementioned, Unibet's view is:

- that in Sweden, even before the existence of non-Swedish operators targeting the Swedish market via the Internet, gambling opportunities in society have increased, not decreased. In fact, the de facto monopoly operators, have historically been aggressive buyers of advertising space and, at the nearest supermarket checkout, anyone can swiftly and anonymously, no questions asked, place whatever amount of money as a stake. Also, individuals, having in no way been vetted (sometimes also below the legal age for gambling themselves), let alone properly accredited, are, directly or indirectly, allowed to act as trusted agents for the de facto monopoly operators. Such a system could hardly be said to fulfil an aim to limit gambling in

¹⁹Unibet, paragraph 50:

"It is also apparent from the order for reference that the court which is to determine that question is required to disapply the contested provision if it considers that it conflicts with a higher-ranking legal rule, regardless of whether it is a national or a Community rule".



society, and gives reason for serious doubts on the system's coherency to its declared aim.

- that if society has found the means to regulate, for example, nuclear plants, hospitals and banks and other business activities in society, which are being operated in private hands and which requires particular considerations and supervision in order to ensure public health, public order and consumer's protection, then it must surely also be possible to implement proper regulations for private gambling businesses as well;
- that funding of widespread activities that society wishes to encourage and support, often organised by non-profit organisations, should normally be funded over the normal tax distribution system. This, in particular, as funds deriving from gambling (excluding funds deriving from the horse racing gambling) have very little, if any, connection to the non-profit organisations engaged in such activities.
- that funding the horse racing sport, directly from the gambling funds it generates, has its logic, although, it could be challenged as to why it has to be conducted through a monopoly operator²⁰. Furthermore, it could be argued that this specific system with a monopoly system on horse race gambling exists ultimately to ensure the existence for the horse (and agriculture) business in Sweden. If so then, this system very much resembles governmental subsidies, part of economic policies, which can hardly, under applicable EU principles, justify the same monopoly. Nonetheless, Unibet recognises that one particular problem for the horse racing sport is that under the applicable EU directive on database rights and similar, and the recent case law in the same field, the horse racing sport has very limited possibilities to control exploitation of the horse races and events as such; this as those are in the public domain, more or less available for each and everyone to offer to gamble on.

6.3 In conclusion, Unibet believes that at present there exists a general understanding that the existing gambling legislation, in its basic principles, is obsolete, and that it should be substituted with new legislation that takes into account the factual situation combined with a well-balanced aim to protect the young and vulnerable - and also considering certain individual interests that are justified.

7. Regulated Markets within the EU

7.1 As previously stated, it is fact that a number of EU member have regulations in place, with individual variances, actually allowing private industry within the gambling sector - despite that advocates for the de facto monopoly disagree to this fact.

Furthermore, one must observe that in most European countries, private operators and monopolies co-exist. France, Spain, Italy, Germany, Belgium, the United Kingdom, the Netherlands etc. all allow private operators to organise and conduct certain types of gaming

²⁰ See European Commission in the EFTA Court case stating that the allocation of the proceeds of gambling to the horse racing industry could not be considered as a justified reason of public order.



activities, *e.g.*, sports betting and/or casino games, and have at the same moment a monopoly for other games²¹. The fact that often only lotteries are subject to a monopoly has a historical explanation and does not reflect a wish or desire to curb the pretended secondary negative side effects for society at large²².

7.2 Malta is possibly the only EU member state, which has already adopted one of the most comprehensive and detailed legislations in the world, with a strong emphasis on controls against all sorts of financial irregularities, protection of the young and vulnerable, and general consumer protection measures.

In conjunction with the on-going lawsuit Unibet vs. the Swedish Government, previously mentioned, Unibet has part of its argument provided by a comparative study between Maltese regulations, to which Unibet has to adhere, and Swedish regulations, to which a de facto monopoly operator in Sweden has to adhere²³. As a conclusion of the said comparison, Unibet believes it fair to suggest that the Maltese gambling regulations ensure public health, public order and consumer protection for Swedish individuals more than the current Swedish gambling regulations²⁴.

Great-Britain is possibly the EU member, which historically has the most experience of a regulated gambling market. The current regulation originates from a pragmatic measure, taken decades ago, to cope with, at that time existing gambling businesses, not in any way controlled, let alone licensed. Worth noticing in this context is that, for example, in regard to so-called betting shops, there is currently in place a rather strict regime on where such shops may be located as well as on how such shops may be exposed to the public; also TV advertising is more restricted. All this is very much in contrast to Sweden, where betting opportunities are rather aggressively offered with very few restrictions. The legislative body of Great Britain has recently, as a result of having had a commission thoroughly study the gambling market from a national and an international perspective, adopted a new gambling law, which is currently in a transitional period of fine tuning of, for example, the Betting Duty, which is set at 15% calculated on Gross Profit. The cornerstones of the new regulations, as Unibet has understood them, are:

- to put consumer protection as the main focus;

²¹ See the executive summary of the study on gambling conducted by the Swiss Institute of Comparative Law. <http://ec.europa.eu/internal_market/services/gambling_en.htm>

²² "Gambling and Speculation: A Theory, a History, and a Future of Some Human of some Human Decisions, Reuven Brenner and Gabrielle A. Brenner, Cambridge University press, March 1990.

The authors argue that the negative image of gamblers and of speculators stems from prejudice, whose roots are in the distant, forgotten and religious past. Society and regulators have frequently confused gambling with speculation and the anti-gambling laws were, at times, erroneously interpreted as implying the prohibitions of contracts in futures and insurance markets. One consequence of all this confusion was that during this century both in the United States and England, the legislation and law on betting and gambling became ambiguous. The authors touch on this issue and make policy recommendations: to abolish restrictions on the industry, diminish the states' role in selling lotteries, and, at the same time, make legal distinctions capable of helping the tiny percentage of players who might be "addicted." The authors' recommendations on gambling are based on their conclusion that gamblers are neither "mentally ill" nor "criminals" and that gambling does not lead its practitioners to poverty. Rather, it is the other way around: some of the poor and the frustrated gamble.

²³ See *Eskilstuna Tingsrätt* under file number T 241703 and T 2418-03, document submitted 20 October 2004).

²⁴ Malta's current regulatory framework on gambling is available on the homepage of The Lotteries and Gaming Authority www.lga.org.mt, see: the "Remote Gaming Regulations 2004").



- to protect the young and vulnerable;
- to create a regulation allowing, in principle, any business passing a “fit and proper” test to freely operate under a relevant licence – this on-line or land-based, domestically or cross-border; the idea is that gambling is an economic activity in society, more or less as any other economic activity in society, albeit requiring an adequate framework taking into consideration particular specifics for the activity itself;
- to create a monitoring body that can, quickly and firmly, act against any operator not adhering in good compliance to the regulations;
- to create competitive financial incentives for businesses to establish and locate their operation in Great Britain rather than offshore;
- to allow operators licensed in Great Britain to utilise a kite mark, in order to distinguish them from remote on-line operators not licensed in the UK; and
- to not take particular measures, such as blocking measures, against operators established, operating remotely and located in other Member States of the European Union. The reasoning behind this is, that it is assumed that kite marked operators may have competitive advantage compared to offshore operators, both with customers resident in Great Britain, as well as customers resident elsewhere. The commission behind the new regulation has explicitly expressed a view, well in line with the British traditionally liberal approach on free trade that customers resident in states other than Great Britain are more than welcome to do their business with British operators – and in consequence, vice versa should apply.

7.4 In regards of the horse racing sport in Great Britain, it is worth mentioning in this context that all gambling operators in Great Britain that offers horse racing in their portfolios are subject to a mandatory levy which is collected directly by the relevant sport organisation²⁵.

7.5 In conclusion, the gambling regulation to come in Great Britain, is protection focused, although, balanced with a realistic way of considering the realities of a transparent and competitive environment²⁶. The weak point, however, is the level of gaming duty imposed. Following the announcement of Chancellor to exercise a 'Remote Gaming Duty' at 15% GW, UK stakeholders expressed their disappointed that the UK has effectively priced itself out of the market and missed a real opportunity to lead the way in terms of international regulatory standards²⁷. As predicated, one can only observe that notwithstanding the high

²⁵Horsrace Betting Levy Board (HBLB), < <http://www.hblb.org.uk>).

Cf. also point 8 infra on the transition from a monopolistic closed market to an open competitive service market, with a key difference between competition in the service vs. infrastructure.

²⁶ See for further information www.gamblingcommission.gov.uk and the homepage of the Department for Culture, Media and Sport (“DCMS”) www.culture.gov.uk.

²⁷ See the press release of the UK based Remote Gaming Association (RGA) of 21 March 2007: “Chancellor closes door on remote on Remote Gaming”:
<<http://www.rga.eu.com/shopping/images/RGA%20response%20to%20RGD%20announcement.pdf>>



end regulatory frame for remote gaming, no major remote operator has relocated to the United Kingdom, on the contrary some have even announced that they would relocate to alternative jurisdictions such as Malta, Gibraltar or the Channel Island. In this view, and albeit its good intentions, the UK government could not achieve one of the key objectives of its reform by imposing a too high betting tax on remote gaming operations.

7.6 Italy is at present in a transition period, adopting a new gambling regulation, which, with interest in this context, would enable, in principle, any operator holding a relevant gambling licence in another EU/EEA member state to participate in a public tender and, if it passes a “fit and proper” test, as well as the Government’s final general assessment on the number of total operators, to be rewarded a licence valid for the Italian on-line gambling market. The Italian Government further requires the operator to have local presence in Italy.

7.7 The Italian Government has, suffice to say, the final say on the Betting Duty structure. The proposed structure for Betting Duty, as it is understood, will, according to international industry experts, have difficulties to be competitive, in a transparent and open environment, however, in order to protect its new system, the Italian Government, will continue, what is already has started, namely to implement certain blocking measures, which effectively will prevent, among others, operators holding a gambling licence in another EU/EEA member state, from competing on the Italian market with such operators that hold an Italian licence.

7.8 Now this new Italian regulation, which enables certain EU/EEA operators, which are ultimately willing to pay Italian Betting Duty to be licensed in Italy, but effectively blocking other EU/EEA operators not opting for an Italian licence, has opened up a new issue with two sides of the coin.

However, the operational and tax requirements impose a have burden, and the situation on the terrain seems to suggest that the Italian model is not sustainable. This may be as well reflected by the fact, and still subject to EU scrutiny, Italy is preparing a further opening of the market, this without requiring a local presence or establishment

7.9 The first side of the coin is, that Italy has levelled the playing field by allowing any private industry qualified and accepting the Italian framework, and offered such operators the opportunity to do business on the Italian market, and in consequence, any (remaining) restrictions exercised, are not in breach of Article 49 of the EU treaty, but instead in line with the accepted exceptions, i.e. the remaining restrictions are fulfilling an aim to ensure issues relating to public policy, and, in the context not disproportionate.

7.10 The other side of the coin consists of two views, namely:

- that new legislation is tax driven, i.e., it exists to increase the public purse. A restriction with such a purpose can hardly, under the EU treaty, be imposed at all; and



- that new legislation permits private operators from another EU/EEA member state, only subject to the condition that they are also licensed in Italy, to operate in the Italian market. A restriction against an operator from another EU/EEA member state, though not licensed in Italy, to operate cross-border, should have difficulty passing the proportionality test under the EU treaty.
- A local license only allows a partial offer, i.e. sports betting and poker tournaments, no other games. Further, AAMS determines on which events bets may be organised and the minimum and maximum odds. Besides rendering the offer non-competitive, Italian customers (www.unibet.it) are better off playing at the international offering of Unibet (www.unibet.com) as they have there a more complete, better in quality and cheaper offer²⁸.

In conclusion, the Italian model will not, in the view of Unibet, address the issue that it was possibly meant to in the first place. Most likely, such a model will attract criticism both from the European Court of Justice as well as from the European Commission.

7.12 Belgium as a fourth member state to implement a license system enabling operators to apply for a gaming license. The Belgian Government issues a seal of approval which is a form of certificate to hold a license. The stipulated requirements to receive a seal of approval are fulfilment of safety and security, financial health, terms and conditions, corporate responsibility, customer protection and taxation.

In the parliamentary works of the Bill, the Belgian legislator expresses a clear understanding of the complexity of an internet driven economy and the fact that more traditional ways of regulating and enforcing are not effective or adequate.

In this view, it is innovative and understandable that the Belgian Government does not require a local operating legal entity in Belgium to hold a gaming certificate (or license), but that regulation is carried out in cooperation with the authorities in the Country of Origin²⁹ ensuring that the operator provided the necessary safeguards *as if* locally established. By the same token, the Belgian regulator, or more general the country of consumption of the gaming service, should get access to all information in relation to its jurisdiction, for instance to verify duties paid on gross win, address customer complaint, conduct and assist in fraud investigations, etc.

8. Regulated Competitive Market in Sweden

8.1 Unibet, whose stakeholders are widespread in the global financial community, strongly believes that regulations for gambling should be in place. No bona fide business wishes to operate under legislation, which makes its business constantly challenged on a legal basis, nor wishes it to operate under anarchy. Furthermore, Unibet strongly believes

²⁸ The Guardian, 4 December 2007, "A big Levy increase would come at expense of punters", <<http://sport.guardian.co.uk/horseracing/comment/0,,221324,00.html>>

²⁹ This can, for instance, be organised via a contract (Memorandum of Understanding) between the i) the operator, ii) the regulatory in the Country of Origin and iii) the regulator in the Country of Consumption.



that a government should only be the regulator, not the operator³⁰; thus all operators should, in principle, be in the hands of private industry. In consequence, for Sweden this means that as far as it is possible and reasonable, existing de facto monopolies should be privatised.

8.2 Unibet understands that any change on a national level of the gambling legislation in Sweden, must ensure the Treasury that revenue wise any such changes will be at least neutral; i.e. amounts collected under the existing system, must at least be in line with amounts collected under any new system. For example, a Betting Duty applied on Gross Profit could neutralise the effects of private competition in the sector. Another issue is that a Betting Duty system as such, may, due to competition, globalisation and transparency, or possible EU directives, or any other reason, face being challenged in the future.

8.3 Unibet has the greatest respect and sympathy for the non-profit organisations and their members on all levels, and can understand their concerns about a possible cut in funding, should the system change. However, in this respect, Unibet fails to understand why the Government, if it in the future collects Betting Duty and other possible taxes, rather than as now dividends from its own entities, cannot continue distributing funds to the same organisations as now which are benefiting from the current system.

8.4 Unibet can understand that the horse racing sport feels that other parties capitalise on the fruits of its labour without contributing. However, one should bear in mind that the horse racing sport indirectly owns the brands (Indeed, commercially strong and well protected brands) under which more than 95% of all Swedish horse racing gambling is turned around. Pure revenues that possibly are lost on this minor fraction would most likely be compensated for.

8.5 In this view, Unibet holds that an in depth review of the scope and relationship between the Swedish horse betting monopoly (ATG) and owners of race tracks (STC/SG) should be undertaken to identify avenues for an transition into an open competitive service market. It is indeed true that ATG, as a betting service provider, is a substantial financial contributor of the horse racing industry. However, and considering the dynamic and rationale in other sectors and industries, notably transport, electricity and telecommunications, the financial dependency of a monopoly as such is a superficial and wrong justification.

In this regard, one should make a key difference between the introduction of competition in the service sector (betting) and competition on an infrastructure level (horse tracks). In a traditional monopolistic market, service provider and infrastructure are vertically interconnected. In an open regulated and competitive market, competition is inserted on the upper service level, making use of the underlying infrastructure level.

³⁰ Cf. general principles of competition law and equal market treatment, as recently demonstrated in the telecom industry.



	Service provider	Infrastructure
Rail transport	Deutsche Bahn, Connex, SJ, Tågkompaniet	Operator railway network
Air transport	BA, Virgin, SAS, Ryanair, Fly Nordic	Operator of airports
Electricity	EDF, British Gas, Eon, Vattenfall, Birka energi, Fortum	Operator of the grid
Betting	ATG, Unibet, UK Tote	Owner race tracks/horses

Presuming that an infrastructure requires a minimum budget of 100 to remain operational, one *in se* should not care if that amount comes from one monopoly or a number of “service providers” in a competitive market, provided the infrastructure gets sufficient funds³¹. Moreover, one could even say, that for an infrastructure provider, the latter would like to have as much service providers on his infrastructure/network so that it can become a profitable operation on its own, stimulating amongst other further investment and development in the network/infrastructure.

On the contrary, and if technology allows the provision of the service without requiring the “old” infrastructure in the same manner, and at a cheaper consumer price, consumers will “migrate” over time to the new service provider to benefit from the better and/or cheaper product. This will trigger an increasing dynamic, following which the “traditional” monopolistic operator will loose clients, is subject to reduced revenue and in the end may have problems to keep on financing the infrastructure at the predefined level of 100. Deteriorating infrastructure will lower the consumer experience and push him to the new alternative operators, etc...

A transition from a monopolistic market to an open competitive regulated market could potentially be characterised by the following:

- phased segregation of services provider vs. provider of infrastructure, over which different services are provided:
 - a) monopoly: service and infrastructure are (often) bundled
 - b) separation of service provider and provider of infrastructure
 - c) introduction of competition on the service layer, as was realised in television, telecom, energy and transport. This would allow all market participants to have equal access to the infrastructure to provide their services. Competition on the underlying infrastructure is more difficult to achieve as it involves high (historical) costs and the infrastructure can be shared³²

³¹ < <http://www.racingeconomics.com/current-issues.html> >

³² Competition on the infrastructure can be more easily introduced by innovative technologies not requiring as substantial investments (cf. mobile phones in third world countries make land based telecom networks obsolete, UMTS will make FO networks less necessary to provide internet broadband, digital distribution of TV signals no longer requires physical networks, virtual horseracing may replace on-track horse racing . See for instances virtual horse racing on Sky:



- adoption of specific regulations for the service providers and the infrastructure providers, which may require different set of rules due to specific operational and business requirements³³;
- independent sector specific regulatory body, e.g. to ensure compliance to rules and make sure relationship between service providers and infrastructure is/remains at arms' length
- the case being, compensating mechanisms should be put in place to curb certain effects of open competition. A similar “universal service for fixed line telephones” concept could be considered for horse tracks that may not be capable of finding on their own sufficient independent financing.

Annexes:

1. DCMS position paper - A Safe Bet for Success - modernising Britain's gambling laws
2. Remote Gaming Regulations Malta
3. G4 Code of Conduct
4. Europe Economics, “Remote Gambling Taxation – a report for the Remote Gaming Association

<http://www.skyvegaslive.com/thehorses.asp?sub=THE+HORSES> , <http://digital-lifestyles.info/2004/03/09/sky-launch-virtual-horse-racing-channel/>

³³ Cf. the so-called telecom package(s), consisting of number of Directives, Regulations and other EU regulatory instruments.
< http://ec.europa.eu/information_society/policy/ecom/index_en.htm >
< http://ec.europa.eu/news/science/071113_1_en.htm >